

RULES HEARING
INDIANA STATE DEPARTMENT OF HEALTH

CAUSE NO. 03-04

Page 1

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RULES HEARING

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DATE: July 30, 2003

TIME: 11:00 a.m.

PLACE: LaPorte County Annex and Security Center
Commissioners Meeting Room
809 State Street
LaPorte, Indiana

HEARING OFFICER: Jan Berg

REPORTED BY: KAY DORNBURG

ORAL STATEMENTS BY:

David C. Kovictz

Dave Hardister

Don Schnoebelen

Marlys Pedtke

Steve Adams

Robert Watkins

Max Van Meter

Leroy Yoder

V. Raj

Terry Herschberger

Bill Grant

Ian Steele

Georgia Mareska

Mike Arnett

Doug Miller

Tom Wickart

Gretchen Hellman

Patricia Rogers

Larry Huber

Richard Wise

Tom Buszynski

Lance Gould

1 (WHEREUPON, THE FOLLOWING
2 PROCEEDINGS WERE HAD:)

3
4 JAN BERG:

5 Good morning, everyone. We're going to get
6 started now.

7 I want to mention if anyone wishing to speak
8 today or to have the record show that they were present at
9 this hearing, you will need to have filled out one of these
10 little sheets of paper that are available in the back. If
11 you're wanting to speak or have the record show you were
12 here, please fill in one of these and someone will bring it
13 up to me.

14 This is a public hearing before the Indiana State
15 Department of Health on the 30th day of July, 2003, at 11:00
16 a.m. in the Commissioners Meeting Room, LaPorte County Annex
17 and Security Center, 809 State Street, LaPorte, Indiana.

18 This case is docketed before the Executive Board
19 of the Indiana State Department of Health as Cause No. 03-
20 04, a rule to establish the requirements pertaining to the
21 disposition of excremental and sewage matter through the
22 design, installation, construction, maintenance, and
23 operation of commercial facility, residential, cluster, and
24 experimental and alternative technology onsite sewage
25 systems.

1 Notice of time and place of this hearing was
2 given as provided by law by publishing on June 24, 2003, in
3 the Indianapolis Star, and on June 24, 2003, in the LaPorte
4 Herald-Argus, and by publishing in the Indiana Register
5 dated July 1, 2003.

6 Proof of publication of this notice has been
7 received by the Indiana State Department of Health, and the
8 notice and proof are now incorporated into the record of
9 this cause by reference and placed in the official files of
10 the Department.

11 My name is Jan Berg. It's B-e-r-g. I have been
12 appointed hearing officer to serve in this cause.

13 As I mentioned earlier, anyone wishing to speak
14 today or have their name appear of record, please fill out
15 one of these sheets of paper in the back of the room.

16 Oral statements will be heard today, and written
17 statements may be handed to me today or mailed to me at my
18 office at 1010 North High School Road, Indianapolis, Indiana
19 46224. All written statements need to be received by me by
20 August 13th, 2003.

21 All written and verbal comments will be reported
22 in my report on this hearing to the Executive Board of the
23 Indiana State Department of Health.

24 My role today -- I'm not part of the decision-
25 making process in this matter. My role is solely to report

1 to the Executive Board your comments today. So when making
2 your case, you need to be directing your comments to the
3 Board, which would be the people you're trying to convince.

4 Each person that speaks on record is requested to
5 speak at the podium at the front. Also, please clearly
6 identify yourself by giving your name, spelling it, and
7 identifying who you represent.

8 Will the official reporter designated for this
9 hearing please raise your right hand and state your name?
10

11 (Reporter was duly sworn.)
12

13 JAN BERG:

14 Okay. I have several -- a large stack of papers
15 of people who would like to be heard today. I also have
16 some people who did not designate whether they wish to speak
17 or not. After I go through the people who have indicated
18 that they desire to speak, I will then ask if anyone else
19 would like to come forward, and anyone who's changed their
20 mind, please come up.

21 Also, if someone has covered the point you wanted
22 to make and you don't want to come forward and speak
23 anymore, just let me know when I call your name. Okay?

24 I'm going to take these in the order they were
25 handed to me.

1 David Kovictz, president, IBA?

2

3 MR. KOVICTZ:

4 Good morning. My name is David Kovictz. I'm
5 president of the Indiana Builders Association. We, that is,
6 the Builders Association, are here today to ask the
7 Executive Board of the Indiana Department of Health to call
8 proposed Rule LSA 02-321 for onsite septic systems and
9 delete the requirements for nitrate mitigation and make
10 numerous changes before resubmitting the rule for adoption.

11 Our basis for making this request is that the
12 rule contains the requirement for nitrate mitigation as a
13 groundwater quality standard set forth in Section 55 of the
14 rule that places unreasonable demands on homeowners and
15 prerequisites which are in themselves technically impossible
16 to comply with.

17 Not only is the rule not reasonable, it is
18 nonsensical. The physical impact of this requirement will
19 strike at the foundation of housing affordability in this
20 state while not impacting the quality of groundwater.

21 At the meeting recently with leadership of the
22 State Department of Health, IBA is now of the opinion that
23 the nitrate requirement is not mandated by the groundwater
24 quality statute, IC-13-18-17-5, but is an arbitrary response
25 on the part of the Department.

1 The connection of nitrates in septic effluent to
2 the quality of water has no scientific basis. That means
3 that there is no evidence that a reduction in septic
4 nitrates will improve the quality of groundwater.

5 At the same time, this requirement is very, very
6 costly to those who can least afford it. And technologies
7 to provide the reduction are not yet available. The
8 requirement needs to be deleted from the rule.

9 We are also hearing of many, many recommendations
10 that need to be changed before this rule is adopted. We are
11 also submitting over a hundred changes today to this rule.

12 Please, while other recommendations are being
13 made to refine parts of the rule, please recall this rule.
14 The Executive Board has a responsibility under IC-16-19-3-4
15 to adopt reasonable rules on behalf of the Department. This
16 rule is not reasonable.

17 Recall the rule. Allow the Department to review
18 all the recommendations in a timely manner with interested
19 stakeholders. Delete the nitrate requirement and go forward
20 when the rule is ready.

21 Thank you very much.

22
23 JAN BERG:

24 Thank you. Dave Hardister?

25 I should mention before you start, I'm going to

1 limit comments to ten minutes. If someone -- if you go over
2 a few minutes, I'll allow that, but try to keep your
3 comments under ten minutes.

4
5 DAVE HARDISTER:

6 I just wanted to state that we bought a home out
7 on 525 on 335 North in the Indian Estates, and our septic
8 tank is working beautifully. We've been there almost ten
9 years and never had a problem. The water in this area has
10 been tested and it's fine. We haven't had any problem with
11 the water.

12 The septic tank works fine. And as far as I
13 know, the people that I have talked to in that area feel the
14 same way about it. We don't know why all of this is coming
15 down again.

16 It's been a problem that people are trying to,
17 seems like, make a lot of money in running sewers in that we
18 don't need. And they never yet been able to come up with a
19 figure that it's going to cost us per month once they run
20 the sewer in. And that's not water.

21 If they run it in, no one can tell you how much a
22 month you're going to be paying. Anywhere from \$90 a month
23 to three or four hundred. We don't know. It could be that.
24 We don't have any firm figures to go on.

25 So, what I'm saying is that it doesn't seem to me

1 that there's a problem with the water now, and I can't see
2 bothering it at all. Septic tank is working fine. It
3 hasn't given us a problem in the nine years, and it will
4 probably go for another nine or ten.

5 And that's all I have to say.

6
7 JAN BERG:

8 Thank you. Don -- I'm going to butcher this name
9 -- Schnoebelen?

10
11 DON SCHNOEBELEN:

12 Pretty close. I was in Indianapolis; I thought
13 you'd remember.

14
15 JAN BERG:

16 I should have.

17
18 DON SCHNOEBELEN:

19 My name is Don Schnoebelen. It's S-c-h-n-o-e-b-
20 e-l-e-n. I'm an environmentalist with the Elkhart County
21 Health Department.

22 I've been involved in public health for 23 years,
23 seven years with the health department, four years with an
24 installer and another 13 years back with the health
25 department.

1 My comments are somewhat general regarding the
2 problems with LSA Document 02-321.

3 This proposed rule does nothing to improve the
4 function of onsite sewer disposal systems in the state of
5 Indiana. Nor does it do anything to promote the use of
6 innovative technology which could improve the functioning of
7 the onsite systems.

8 In fact, in my impression, it does just the
9 opposite. It promotes an entirely too proscriptive approach
10 to the installation of systems.

11 In many cases it will not be possible to adhere
12 to the actual code and install a sewage system. It's been
13 proven -- the Indiana Organization of Wastewater
14 Professionals did a training session, found out that parts
15 of the code were so proscriptive that they could not
16 actually follow it and install drainage as it was proposed
17 to be installed.

18 It will not improve public health in the state of
19 Indiana. And that is the charge of the Indiana State
20 Department of Health and local health departments.

21 One prime example is Chapter 3, Section 6, which
22 uses the nitrate leaching index from the United States
23 Department of Agriculture and NRSC. It was never intended
24 to be used as a site-specific tool, only a general planning
25 tool. This is the type of rule that we've got proposed

1 before us.

2 Additionally, I feel the entire process has been
3 tainted at this point because of submission of a document
4 from the Wastewater Management Committee of another proposed
5 rule.

6 It was submitted as a comment to the rule that is
7 published in the Indiana Register and the LSA Document I've
8 referred to.

9 I've had numerous phone calls requesting which
10 document people should comment on. To my knowledge, there
11 is only one document, and that is the document LSA 02-321.
12 The other document was submitted as a comment to this
13 document.

14 It's quite a bit of confusion at this point. I
15 wanted to make that very clear.

16 With this in mind, I have to ask that the
17 Executive Board not adopt LSA Document 02-321. Its staff
18 needs to work with all the stakeholders involved in this
19 process and write a rule that we can all live with. A rule
20 that will promote public health and allow us to install
21 septic systems that will last an indeterminate amount of
22 time and serve people.

23 It needs to be done in this manner with
24 cooperative efforts so that we can enhance the functioning
25 of the systems without a cost so great that we will see many

1 industries suffer needlessly.

2 Thank you.

3

4 JAN BERG:

5 Thank you. Bob McKean?

6

7 (No response.)

8

9 JAN BERG:

10 Bob McKean? We'll put him at the end.

11 James Keller?

12

13 (No response.)

14

15 JAN BERG:

16 Edie Gray?

17

18 (No response.)

19

20 JAN BERG:

21 Ken Sturry?

22

23 (No response.)

24

25 JAN BERG:

1 All right. Where are all these people?

2 Tom Cash?

3

4 (No response.)

5

6 JAN BERG:

7 Marlys Pedtke? Good morning.

8

9 MARLYS PEDTKE:

10 Good morning. My name is Marlys Pedtke. That's
11 M-a-r-l-y-s, P-e-d-t-k-e.

12 I am staff for the Indiana Builders Association.
13 The address is 4435 Broadway Street, Indianapolis 46205.

14 I am here this morning presenting for the record
15 the 100 changes that David Kovictz, our president, spoke of
16 a few minutes ago, so that they would officially be
17 presented for the Executive Board to read.

18 I am also here to reiterate the position of IBA,
19 that we are opposed to this rule.

20 They are not opposed to healthy and cooperative
21 and forward-moving septic regulations. We are opposed to
22 this rule.

23 Thank you very much.

24

25 JAN BERG:

1 Dot Huey?

2

3 (No response.)

4

5 JAN BERG:

6 Steve Adams?

7

8 STEVE ADAMS:

9 I'm Steve Adams of Stevens & Block, manufacturers
10 of septic tanks in Elkhart County.

11 And after reviewing the new regulations that the
12 state has put down in writing, there are a few things that I
13 want to stress.

14 I think it's going to be just a little bit cost-
15 prohibitive as far as the manufacturing end of it goes, in
16 which the homebuilders -- and I don't mean this to be
17 facetious in any way, but out of sight, out of mind. The
18 septic tank is buried in the ground. They don't care what
19 it is.

20 And I'm not saying they don't care. I'm just
21 saying the cost of the changes that we might have to make is
22 going to be probably -- just as an example, the seal.

23 They're asking us to put rubber seals in there
24 with stainless steel clamps. They don't mention the nuts
25 being stainless steel. They do mention stainless steel

1 clamps to seal the pipe going into the septic tank, which is
2 a great idea. But the type of seals we're using now is a
3 friction type of seal, probably cut out -- I want to mention
4 that. Probably cut out by the installer, fits and seals
5 quite enough, I would imagine.

6 There's no seepage. When they used to use mortar
7 and grout around the holes, that would dry up and possibly
8 crack a few times.

9 But we've got, for example, three outlets for our
10 septic tanks. If we have to put those seals on each one of
11 our septic tanks, it's going to increase that cost at least
12 \$60 to \$80. That's just a guess at this point in time.

13 From what we have just looked into by different
14 manufacturers, that's the minimum, I think. But it could
15 even be more.

16 They mention in there they want us to use at
17 least a minimum of a half-inch threaded -- female threaded
18 plug. And to be plugged on the job site with a half-inch
19 male, which is okay.

20 But there again, the manufacturing aspect of
21 putting that plug in that little piece of pipe in a three-
22 inch wall and four-inch bottom is very time-consuming. It's
23 going to be costly again. So we're going to have to
24 increase another little bit of change to the price of the
25 septic tank.

1 Standardizing the access openings, that would be
2 about a minimum of 20 inches. Well, now they've increased
3 that so from the past, we have to set up again and make a
4 new pan or go with the cast and plastic risers, which would
5 cause us some problems in the manufacturing aspect as far as
6 transportation of the items -- of the septic tanks.

7 There is one thing I think they should do to
8 strictly enforce it state-wide, is to put one standard size
9 opening in the septic tank and have it one way, whether it
10 be a formed tank or a constructed, in the septic tank itself
11 at the time of the construction of the septic tank, or use
12 the same type of sealing we're using now, just a concrete
13 plug.

14 The two-compartment tanks -- this, again, the
15 state kind of hee-haws around about it, about when are you
16 going to be able to do it. Well, they don't understand that
17 the two-compartment tanks are going to take time to build at
18 a very, very high cost.

19 I checked with a contractor -- or a manufacturer
20 of our septic tank forms, and at one point in time we were
21 very strongly going to go to two-compartment tanks. And
22 within six months, it almost doubled the price of the
23 construction of the dual tanker tank.

24 Maybe they saw something coming down the road
25 that we didn't see. And they already know, well, Indiana is

1 going to go to two compartments, we'll just jack the price
2 higher. Well, I don't know what the deal is there, but it
3 has increased 50 percent in the cost of manufacturing that
4 septic tank.

5 Coating is -- here's another item. I know the
6 coating of the septic tanks, we've got to get this thing
7 taken care of. They've already shown it's not necessary,
8 but it's costing the homebuilder and the homeowner extra
9 money for every septic tank we put in that ground.

10 And it's been in litigation now for approximately
11 five years, and we need to get this thing finalized. We're
12 going to coat the tank or we're not going to coat the tank.
13 It's costing too much money and, really, it's -- it's a
14 mess, to be honest with you.

15 I think that pretty well covers everything I
16 wanted to talk about. Yes, that's it. Thanks.

17
18 JAN BERG:

19 Thank you. Robert Watkins?
20

21 ROBERT WATKINS:

22 Good morning. I want to thank you for allowing me to
23 speak. My name is Robert Watkins, R-o-b-e-r-t,
24 W-a-t-k-i-n-s. (Inaudible remarks)
25

1 THE REPORTER:

2 I'm sorry, Mr. Watkins, I can't hear you. Can
3 you speak up a little bit?

4

5 ROBERT WATKINS:

6 I can hear me just fine. (Inaudible remarks)

7

8 THE REPORTER:

9 I'm sorry. If you want it in the record, I have
10 to be able to hear you.

11

12 ROBERT WATKINS:

13 Can you hear me now? Is this better? Robert, R-
14 o-b-e-r-t, Watkins, W-a-t-k-i-n-s. I'm the manager of
15 Environmental Health Services for Elkhart County.

16 A few things outlining my credentials for feeling
17 I should testify today. I've been 30 years in public
18 health, 17 of those years in management positions. I have a
19 degree in environmental health, a bachelor's degree. I have
20 a master's degree in earth science. I'm also a registered
21 certified soil samplist in the state of Indiana.

22 I tell you that not to brag about my credentials,
23 but as a reference for the comments I'm about to make.

24 Elkhart County is one of, if not the largest,
25 onsite septic programs in the state, issuing over 12,000

1 permits under the current rule, and averaging over 1,000
2 permits a year over the last nine years, with a failure rate
3 of less than three percent over the last 11 years.

4 We, therefore, have a significant stake in this
5 rule and its impact on our county. Each time I've been to
6 consider my comments for this hearing, I first have a
7 problem with deciding where to start and which sections are
8 most objectionable.

9 Then I become hesitant to present any oral
10 comments at all because in considering the process, the work
11 and the enormous amount of money that has gone into the rule
12 under consideration, I find myself getting more and more
13 angry.

14 To be honest, I have the feeling that the
15 decision has already been made, and I don't have a sense
16 that what I say will make any matter anyway.

17 Two items are of major concern. First, it is
18 inconceivable that a state agency would forward a rule for
19 adoption that has little support in either the regulating or
20 the regulated community.

21 This rule is riddled with errors. It is ripe for
22 legal challenge.

23 The second, I'm concerned that we've been told
24 since the beginning of this debate, over five years ago,
25 that both the rule and the technical specifications would be

1 considered for adoption.

2 The concern should be obvious. The technical
3 specifications not included in the public hearing and
4 approved as part of this rule-making process, then it would
5 be far too easy to change the requirements of the rule.

6 Only recently we learned that only the rule will
7 be heard and the tech specs will be considered only as a
8 reference to the rule.

9 This is a major blow to the credibility of the
10 agency, and it's unfortunate since the bulk of the concerns
11 regarding the rule as proposed are found in the technical
12 specifications.

13 Since this is a concern from the beginning, it
14 also speaks volumes about the growing lack of trust that
15 exists between ISDH, the counties and the regulated
16 communities.

17 In considering what would be best for me to
18 discuss, I considered the process. We've been at this for
19 over five years. Each time we seem to reach consensus on
20 the rule, changes are made which make the rule unacceptable.

21 Twice before, we were ready for the public
22 comment period and did not see fit to respond. Our silence
23 was not because we considered the proposal to be a good
24 document, and certainly not any proposals that would do much
25 to solve the problems of onsite systems of Indiana.

1 They were, nonetheless, documents that we could
2 live with and were not dependent on the county programs
3 committed to public health and doing their best to assure
4 compliance with the 1990 rule.

5 I considered addressing the shortcomings of the
6 rule, the errors that occur throughout and the reference to
7 equipment of questionable value by trade name, but decided
8 that you had already received a good deal of that material
9 from the IHA wastewater management committee.

10 In their presentation of changes proposed, we
11 heard them indicate that the current proposal could not be
12 supported without the changes that -- which were proposed by
13 the committee.

14 I believe they went on to say that even with --
15 even their proposal was made under duress due to the limited
16 time they had to work on the document.

17 I considered discussing the cost of the proposal
18 and the audacity of the ISDH in adding millions of dollars
19 of cost to the taxpayer in an economy with the government
20 running a deficit.

21 Their you-are-guilty-until-proven-innocent
22 attitude and the lack of flexibility in considering how to
23 meet the requirements of the new (unintelligible) issue are
24 very nearsighted and based on a regional planning tool for
25 irrigation not easily adapted to the onsite septic rules.

1 Their attitude in addressing the nitrate issue,
2 or it's their way or no way, only serves to put larger
3 barriers to making improvements to a public health issue.

4 I considered the feeble attempt by the ISDH to
5 estimate the cost and the significant under-estimation of
6 cost based on a clearly flawed process, a process that could
7 be improved or could have been improved by a minimal
8 discussion with local health departments, but not discussed,
9 at least with our department.

10 And it was kept from those wanting to know how
11 the estimates were being made until after the estimates had
12 been forwarded to LSA.

13 A modest estimate of the cost to the residents of
14 Elkhart County alone, based on the soils outlined in the
15 proposal and the percentage of -- I'm sorry -- systems
16 issued in those soils under the proposal will be four to six
17 million dollars annually, plus the cost of the maintenance
18 program.

19 This will assume that the rule doesn't completely
20 destroy residential construction in the county.

21 I'm amazed that the ISDH proposal indicates that
22 there will be no additional cost to local government and yet
23 dictates responsibility to the local government while
24 accepting very little responsibility for ISDH.

25 Just one example in the proposal will mandate

1 systems in a large portion of our county that if installed
2 will require secondary treatment, a technology which under
3 the rule would be considered experimental in Indiana and
4 will require a maintenance program.

5 The rule mandates the local health departments
6 establish a program to insure the maintenance program stays
7 in place. This will be a daunting task for us considering
8 that under the rule we have the potential for between five
9 and six hundred of these systems annually.

10 If there is to be no cost to us, perhaps the
11 state will be providing the additional staff to meet this
12 additional mandate to counties and which really mandate that
13 these maintenance programs stay in place.

14 Perhaps they will tell us how that is to be done
15 should a homeowner decline the requirement.

16 For those counties not being required to install
17 secondary or experimental technology, the rule has set a
18 requirement that will require additional time and,
19 therefore, additional staffing by local departments if they
20 are to comply with the rule.

21 Perhaps the most frustrating part of this process
22 has been the lack of concern expressed by ISDH staff over
23 the manpower requirements to fully implement this rule and
24 the lack of provisions to remove the technology from the
25 experimental list.

1 It is even more frustrating and a widely accepted
2 belief that those departments already in compliance continue
3 to meet all the requirements, while those not meeting the
4 current requirements have little or no incentive to meet the
5 proposed rule.

6 In regards to the maintenance program, if the
7 goal is to propose the incorporation of a maintenance
8 program for septic systems in Indiana, they should say so.
9 Don't base the requirement on a dubious premise that
10 requires equipment that cannot continuously meet the
11 requirements of the rule or that will be of questionable
12 benefit in meeting the express purpose of the rule.

13 I considered discussing the legal reference to
14 the department policy and protocol of the proposal. And as
15 of yet, I'm not sure what those are, how they are drafted,
16 how freely they can be changed, or how enforceable they are.

17 I also considered the disparity that exists
18 between the can-do and the can't-do counties. It seems that
19 the can-do counties are held to a higher standard and to a
20 higher cost and protocols and policies than the can't-do
21 counties.

22 Under the existing protocol for experimental
23 technology, it seems to change at the whims and wishes of
24 ISDH.

25 We in Elkhart County and in this region of the

1 state are required to submit a very detailed drawing and are
2 held to a very high standard of performance. And we can
3 appreciate and support that.

4 Yet, we're aware of other areas where the can't-
5 do attitude seems to prevail, and that experimental
6 technology is being installed without even the basics of a
7 (unintelligible) program plan, and in some cases, installed
8 against the recommendations of the manufacturers.

9 And with some routine installed -- installations
10 are changing other ones without reapplication or resubmittal
11 of drawings to meet the protocol. This is not acceptable.

12 The tech spec only perpetuates this by adding
13 requirements for site plan and draining calculations and
14 then giving an alternative to those counties who can't get
15 that in my county.

16 A decision should be made for the rule based on
17 good practice and what is best for public health, not what
18 we can't do in that county.

19 For the record, given the very proscriptive
20 nature of the proposal, I want to join those can't-do
21 counties and state that the current proposal can't be
22 implemented and cannot be enforced in Elkhart County.

23 I considered discussing the five to six years
24 this rule has been under consideration and the lack of
25 support or consensus, or perhaps I should say the outright

1 opposition that I've heard today.

2 If I felt that the rule set forth a requirement
3 that had a sound scientific backing, was supported by
4 evidence rather than some staffers' desires and was in the
5 best interest of public health, it would be very easy to
6 support it. I cannot support this document.

7 The rule does discuss experimental and
8 alternative technology and then makes the acceptance of that
9 technology dependent upon a protocol that seems to be a
10 frequently changing target based on limited information and
11 discussion.

12 We have had experience -- we have experienced
13 several projects over the last year in which the protocols,
14 which are described as a method of assuring uniformity
15 throughout the state, have been changed several times during
16 a similar project, requiring the homeowner additional cost.

17 The proposal, department policies and protocols
18 go further in dissuading the use of experimental or
19 alternative technology by setting themselves as the judge of
20 technology that has been tested repeatedly by other states
21 and nationally and internationally recognized testing
22 agencies and by public universities.

23 This not only puts the Department at risk for
24 litigation, but fails to accept designs and equipment that
25 have a long track record, but also driving good technology

1 away from the state.

2 Perhaps the one most overlooked aspect of the
3 rule is the failure rate in soils not impacted by this
4 particular requirement.

5 The benefits that would be received from applying
6 secondary technology in soils prone to failures, thus
7 reducing -- thus potentially reducing failure rates in
8 soils. I guess I forgot -- many of those soils are in the
9 I-can't counties.

10 I find it unfortunate that the express role of
11 the rules do not include the following: Fostering a better
12 understanding of wastewater disposal; fostering improved
13 working relations with local health departments and
14 manufacturers and installers; fostering consistency in
15 application and enforcement of wastewater treatment
16 throughout Indiana; provide a program of continuing
17 education, especially for those departments where training
18 opportunities are limited; allowing for the enforcement of
19 the rule with strong support from ISDH rather than the
20 current attitude of you can't do that without our approval
21 or we'll be called to testify against you.

22 By rule or mandate of ISDH assumes responsibility
23 for the implementation, support, interpretation and
24 enforcement of this rule.

25 Currently, the only enforcement in the proposal

1 is by ISDH against the local health departments. And even
2 that seems a shallow threat in the ability of ISDH to take
3 over even one program that's in question.

4 Perhaps the most important goal and the one most
5 obvious with its absence is the reduction of failing septic
6 systems in Indiana.

7 The rule as drafted requires more paperwork, the
8 hiring of consultants and the application of technology but
9 does very little to resolve the problem of under-funded
10 departments and well-meaning but untrained staff or
11 installers, the lack of support for local health departments
12 for correcting failing septic systems in Indiana.

13 I feel that I have a long history of excellence
14 in public health programs and sound public health practice.

15 As written, however, I cannot support the current
16 rule nor the application of a technical specification and
17 the department policies and department protocols in this
18 proposal.

19 It is also my sincere opinion that, as written,
20 this rule is not enforceable but where implementation is
21 attempted, the economic impact on communities involved will
22 be far greater than the benefits received from the rule.

23 Professionally, I feel that the rule should be
24 withdrawn from consideration.

25 Thank you very much.

1

2 JAN BERG:

3 Curtis Turner?

4

5 CURTIS TURNER:

6 I'll write my comments and send them in the mail.

7

8 JAN BERG:

9 I'm sorry; I didn't hear you.

10

11 CURTIS TURNER:

12 I'll write my comments and send them in the mail.

13

14 JAN BERG:

15 Okay, thank you.

16

17 There are additional copies now of the rule in
18 the back of the room. Anyone that didn't get a copy of the
19 rule, they are back there.

20 Max Van Meter?

21

22 MAX VAN METER:

23 Max Van Meter, Monticello, Indiana. My thing is
24 on septic tank design. We received back -- I think it was
25 in March, telling us this is concerning the opening in the
tank of a packet that said the opening should be 15 inches.

1 Here in July we received a packet where it says
2 it should be 20 inches, two openings in the top of the tank,
3 20 inches over the inlet and the outlet.

4 I think they ought to take into consideration the
5 septic tank, that when you enlarge that opening, you're
6 making the top structure of that tank weaker because you
7 take up the space of reinforcing.

8 And another issue -- that gentleman, I think,
9 from Elkhart expressed his on we used a poly-lock seal. I
10 feel that the poly-lock seal is adequate. It is -- stands
11 15 pounds of pressure.

12 The seal that they're proposing in a tank with a
13 stainless steel clamp is going to drive the cost up in the
14 tank. And I think that on the septic tank that as long as
15 it has one large opening in the tank for service -- which my
16 sentiments on that opening should be in the center of the
17 tank for the purpose of the fellows that are pumping the
18 tanks can do an adequate job of pumping the tanks instead of
19 pumping through one end.

20 We've seen time and time again where they pump
21 from one end, they leave the sludge and the soap in the
22 other end of the tank, and as soon as the water pumps up, it
23 plugs the baffle off.

24 And I think there should be reduction on the
25 opening over the outlet. The only area that you need there

1 on the outlet would be to service the effluent filter, and
2 it does not take a 20-inch opening to service that opening.

3 And the state ought to take into consideration
4 that when they make major changes in septic tanks that that
5 only drives the cost up because we're going to pass it right
6 on to the customer.

7 And on the two-compartment tanks, Connecticut has
8 run a survey on two-compartment tanks. The effluent from
9 the two-compartment tank is no better than a single-
10 compartment tank.

11 I think that pretty well covers it.

12
13 JAN BERG:

14 Thank you very much.

15 Leroy Yoder?

16
17 LEROY YODER:

18 I'm Leroy Yoder. We're standing 10.2 miles from
19 the state of Michigan. St. Joe County has lost a one-year
20 supply of buildable lots with a normal sale rate.

21 Although, last year most all of the builders in
22 our area had a better than normal year of building. St. Joe
23 County had less than a normal new home permits.

24 The St. Joe County area planning commission,
25 enacting some of the state-proposed rules and bearing the

1 uncertainty of the state health department's enacting all or
2 part of the proposed rules, new development has basically
3 stopped in the County of St. Joe.

4 There is a much larger amount of developing being
5 done ten miles north in the State of Michigan.

6 In the township north of Granger, Indiana, 359
7 new lots have been preliminarily approved in the last six
8 months. This is more than they have had approved in the
9 last ten years, total.

10 The State of Michigan Health Department does not
11 and is not planning on making such large and costly changes
12 to their septic ordinance rules because the EPA mandates the
13 groundwater protection.

14 The State of Indiana is normally 49th in
15 everything. Why do we need to be No. 1 in this?

16 As a homebuilder and developer, I believe the
17 rule that is in place is very adequate and has less
18 confusion than the new rule and certainly has less cost to
19 the public and private sector.

20
21 JAN BERG:

22 V. Raj?

23
24 V. RAJ:

25 Good morning.

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JAN BERG:

Good morning.

V. RAJ:

My name is V. Raj. And that's a short form for a long name. (Unintelligible) is the long name.

And I'm here to raise an opposition to this new rule. And I'm not an engineer. But from my manufacturing facility, Crest Homes, that is in Middlebury, Indiana, we had extensive discussions, and we found out this rule is unwanted, half-baked, and it is not -- at this time we do not need this rule in the state of Indiana.

Now, this rule actually addresses some wrong issues. Ninety-three percent of the nitrates that is introduced in the soil is by commercial fertilizer, and five percent of it comes from exhaust sources, that is, from automobiles, and that includes also lightning.

Just a bare two percent, that's all that comes from the septic sludge into the soil. So what we are trying to do here is overkill. Again, as I said, we don't want it at this time.

And also, the testing materials that you suggested here, that also is not workable. The nitrate leaching index matter. That is actually used to

1 (unintelligible) the surface application of agricultural
2 fertilizer.

3 And, again, the orders of this rule have very
4 strongly suggested this should not be used for septic, and
5 using this for septic is inappropriate.

6 And, again, there are a lot of new testing
7 methods that are desirable to test the different components
8 of the soil.

9 Next issue, ten milligrams of the effluent
10 quality is too stringent. And also, that is for the
11 drinking water.

12 From an environmental health perspective, ten
13 milligrams are a little more standard for even drinking
14 water. Even for drinking water, it seems too strict.

15 Now, I am coming up to some other issue that hits
16 you right on your face. And that is the cost. I know this
17 very well because I'm in this industry. We build homes for
18 the citizens of Indiana who can't afford to buy expensive
19 homes.

20 And standard septic systems at this particular
21 time cost between three hundred and five hundred or four
22 hundred and five hundred dollars.

23 The new system that you are suggesting will cost
24 an additional \$7,500 to \$12,000. And, again, add to that,
25 we'll have a maintenance and operating cost of three hundred

1 to four hundred dollars.

2 This amount works out more than ten percent of
3 the cost of our homes. And we build extremely good homes.
4 And none of the secondary treatment systems at this time
5 cannot meet the 12 milligrams per liter standard.

6 And also, we find if we go by this method and
7 check the soils of Indiana and 20 percent or more of the
8 land of Indiana is not suitable for septic systems.

9 And also, this rule is economically and
10 technologically not reasonable.

11 And we also found quite a few technical flaws in
12 this rule. Technical flaws, wrong references, erroneous
13 data in the time tables, references, publications which is
14 no more in print.

15 And over-restrictive requirements. And there's
16 no latitude for interpretations and flexibility. And 65
17 percent of the homes with septic systems now have a better
18 system, and that is often state-wide.

19 This rule substantially -- this new rule
20 substantially changes the way things are installed for any
21 apparent reason at this time.

22 The requirements are unworkable. The
23 requirements in Chapter 4 are unworkable. Some of the
24 things specified are unavailable at this particular time.

25 And we feel and believe the rule needs further

1 study before it is enforced. And so we consider the new
2 rule is unnecessary at this time.

3 And I have some statistics which are already
4 discussed here, so I don't want to repeat at this time.

5 We, as I said, are a major manufacturer of the
6 modular homes located in Middlebury, Indiana. And from this
7 location, we ship out homes to destinations in the
8 midwestern states, that is, starting from Iowa on the west
9 and they go all the way to West Virginia.

10 The modular home company is to provide highest
11 quality homes to home buyers in these states for a price
12 that they can afford. And statistics show that every
13 \$10,000 increase in the cost of a home pushes several
14 thousand people out of that home market, and this is going
15 to be disadvantage for Indiana home buyers.

16 The \$7,500 to \$12,000 increase in the cost of a
17 home will definitely discourage several thousand Indiana
18 home buyers and the cherished American dream. I know what
19 that dream is since I came to this country several years ago
20 and how cherished that dream was until we got a home of our
21 own.

22 So what basically this rule is doing is punishing
23 many citizens of Indiana who cannot afford to have a big
24 home, an expensive home, you are trying to push them as far
25 away as possible from cherishing their dream.

1 So I request at this time by using the power
2 bestowed upon us, both sides -- from this platform, I'm
3 talking about a person like me on this side and the state
4 officials on the other side, should not allow this to
5 happen.

6 I request, as a representative of Crest Homes,
7 and in the name of the many citizens of Indiana who dream to
8 be homeowners, to reconsider the adoption of the proposed
9 septic Rule 410 IAC 6-8 02. And let's not sit now idly as
10 helpless bystanders.

11 Thank you.

12
13 JAN BERG:

14 Thank you.

15 Terry Herschberger?

16
17 TERRY HERSCHBERGER:

18 My name is Terry Herschberger. I'll spell that
19 for you -- H-e-r-s-c-h-b-e-r-g-e-r.

20 I'm a homebuilder and a small businessman, and
21 today I gave myself the day off so I could come here.

22 I'm speaking on behalf of 5,550 members of the
23 Indiana Builders Association as chairman of the IBA Septic
24 Committee. This committee has met many, many times over the
25 last five years as this rule has moved through the

1 promulgation process.

2 Since the preliminary adoption of the rule in
3 January, we have had several day-long sessions to review
4 this in detail. We've had soil scientists, health
5 department personnel, builders, developers, manufacturers
6 and installers in the course of this review. And these are
7 the findings:

8 The process of developing the rule as it has been
9 carried out by the Indiana Department of Health has been
10 extremely frustrating. Our committee has met with them
11 several times at their request.

12 We relayed our concerns, and we were told that
13 the rules have been updated so we needed to have a new copy.
14 This happened several times.

15 New versions of the rule abound. They pop up
16 like dandelions and then they disappear in the wind.

17 There were so many versions floating around last
18 fall on the same day, one of our committee members was
19 trying to get a copy of Chapter 4, and we were told it was
20 not written yet.

21 Another committee member attended another meeting
22 where a group of installers was reviewing it.

23 On December 6th I attended a meeting to review
24 Chapter 8. As I began to make my comments, it became
25 apparent there was another new version out there, which I

1 and the others in the room did not have. We were given a
2 copy of the new version, which really eliminated about two-
3 thirds of the text.

4 Since my comments were no longer required, I sat
5 down and shut up, as did several others.

6 I chalked up my six hours of driving, five hours
7 for the meeting, two hours of preparation to poor
8 communication.

9 A few weeks later, the text of specs was
10 specifically posted on the Department of Health's Web site,
11 which included Chapter 8 in its original form with all the
12 original specs in place.

13 I don't know if this was the result of
14 incompetence or intention, but either way it's unacceptable.

15 In January IBA requested the Executive Board to
16 delay preliminary adoption. They declined, saying it was
17 time to move forward and the rule would no longer be a
18 target. Unfortunately, the target is still moving.

19 On July 3rd, shortly after the first meeting, the
20 Health Department staff distributed by e-mail a copy of the
21 rule and a text of the changes proposed by the Indiana
22 Department of Health in association with the Wastewater
23 Management Committee, asking for people to attend the
24 hearing and support those changes.

25 This action raises some questions. Which

1 document is the Department of Health intending to put
2 forward, the one referenced in the rule or the new one
3 distributed by e-mail?

4 How is the general public to know about the new
5 version? It's not referenced in the rules, nor is it
6 available in a public form.

7 After spending six months reviewing the January
8 8th document which was supposed to begin in less than 25
9 working days from the last hearing date.

10 These are substantial rule changes, and they
11 affect a hundred pages of technical specs.

12 IBA does, in fact, support the changes contained
13 in that document to the extent that we have seen them. The
14 changes are extensive, indicating many problems with the
15 rule as it was written.

16 The Wastewater Management Committee is comprised
17 of a group of various individuals. The changes they were
18 able to agree on are a great improvement and prove that
19 further work is needed in several areas.

20 Our committee is determined that the technical
21 spec has many flaws, including technical errors, incorrect
22 data tables, overly restrictive requirements, vague and
23 unclear and poorly worded text, specifications for products,
24 reference to out-of-print publications.

25 Many new requirements have been added without

1 justification for cost or benefits. We've written most of
2 those items which are already submitted.

3 We've also determined that the tech spec is
4 deficient in the way that it addresses three different
5 areas: nitrates, drainage and new technology.

6 The Health Department has chosen to deal with
7 nitrates in a manner that is not justified by science. It's
8 economically and technologically unsound. And it's not
9 mandated by law.

10 Whether they reach the water in significant
11 quantities, however, is a question that no one seems to be
12 able to answer. When high levels of nitrates are found in
13 the groundwater, where are they found? According to the
14 EPA, agricultural fertilizers, golf course fertilizers,
15 residential lawn fertilizers are the primary sources.

16 They also mention failed septic systems and
17 leaking septic tanks.

18 What is the scope of this problem in Indiana?
19 The Department of Health staff has decided the Farm Bureau
20 study of private wells and economic analysis is
21 justification.

22 In the Health Department text, it would appear
23 that 4-1/2 percent of Indiana's private wells have nitrate
24 levels over the limit.

25 However, the study cited was not a random

1 sampling. It was voluntary and therefore influenced by
2 quality -- (unintelligible).

3 Additionally, some counties initiated subsequent
4 rounds of testing in areas where nitrate levels were found
5 to be high, further skewing the results.

6 These facts are noted in a section of the Farm
7 Bureau study entitled, Contributing Results, Cautionary
8 Notes. Apparently, somebody didn't read those notes.

9 How much do septic systems contribute to the
10 overall nitrate problem? (Unintelligible) Although
11 location of septic systems was included in the same data,
12 the results were inconsistent or inconsequential and were
13 not included in the analysis.

14 Other sources of percentages put septic systems
15 at four percent of the total nitrates in groundwater. It's
16 sufficient to say that failing or leaking systems account
17 for a small proportion of nitrates in groundwater as a
18 whole. It is ironic that failing systems are not addressed
19 in this rule. Properly functioning and small systems, which
20 are not a significant source, are heavily represented.

21 Rule 11, groundwater quality standards, set a
22 limit of ten milligrams per liter for nitrates in drinking
23 water.

24 The proposed rule would apply that drinking water
25 standard to the septic effluent before it is even completely

1 through the septic system.

2 The rule fails to recognize the role of soil in
3 producing nitrogen, even though soils with high leaching
4 indexes, some nitrates will be leached out.

5 We are aware of no other state in the country
6 where this stringent standard is being used or accepted.

7 As you have heard before, this use of this
8 leaching effect is in addition to applied technology.

9 IBA, a building association, has estimated the
10 cost of secondary treatments of nitrates at \$21.1 million
11 per year. We'll submit a copy of that analysis for the
12 record when I'm done.

13 Health Department staff estimates the cost to be
14 \$6.9 million. According to Health Department staff,
15 preliminary treatment will only cost the homeowner \$6,000
16 more than the conventional system.

17 In fact, the cost is from \$6,500 to \$12,000 more.
18 These are costs quoted to us by manufacturers and dealers,
19 and they do not include the annual operating and maintenance
20 cost, which adds \$3 to \$4 million for life, among other
21 costs. This has serious ramifications for the affordability
22 of housing.

23 Unfortunately, this is all irrelevant since the
24 technology proposed is unable to meet the standard set forth
25 in the rule. This has been an area of contention since

1 2000, one of the reasons the Department of Health reviewed
2 the rule at that time.

3 Health Department staff, in their May 12th, 2000,
4 letter to us, limitations concerning the ability of
5 available on-site secondary treatment technology to reduce
6 total nitrogen pursuant to the groundwater standard supplied
7 by IDEM.

8 We have determined the best course of action is
9 to address this limitation prior to preliminary adoption.
10 While over three years down the road now and we're about to
11 vote on final adoption of this rule, and this issue still
12 has not been resolved.

13 We have asked Health Department staff at
14 virtually every meeting we've had with them whose product or
15 system will do the job. They have told us Ranco,
16 Whitewater, Sable, Earth Tech and others will be suitable.

17 These are the systems we have investigated and
18 based our cost analysis on and, according to the
19 manufacturers, are unable to meet a standard as to
20 millimeters per liter.

21 A week ago we asked staff again other products
22 that would meet this requirement. They answered that they
23 could not handle specific products. When pressed on the
24 issue, they said there were products that were on the ragged
25 edge of meeting this criteria.

1 As builders and installers of these systems, we
2 cannot sell new or improved product for such a critical
3 function as sewage disposal. It's too great of a liability.

4 Health Department staff, in fact, has relied too
5 heavily on technology that is simply not designed to meet
6 the stringent standards of nitrate removal.

7 If there are no systems available to us, what are
8 our options in soils that require secondary treatment?

9 Health Department staff has told us that our
10 options are to hook up to municipal sewers or simply not to
11 build. A municipal sewer is not or will not be available
12 for many of the affected areas. Statewide, this is 20
13 percent of Indiana land, possibly more if current soil maps
14 are to be used.

15 In Elkhart County, 32 percent of the land is
16 affected. This is land where we will build 400 to 600
17 houses this year.

18 St. Joe County has 31 percent of its land
19 impacted, while LaPorte County has 89 percent.

20 This rule will have devastating impacts on people
21 trying to buy their first home, on the builders who are
22 building them, on jobs and our local economy.

23 No matter what the Health Department staff says,
24 they are not required to adopt new rules. Rule 11, the
25 groundwater quality standards, say that the Health

1 Department must also consider the nitrates if and when they
2 adopt new rules.

3 It also states that economical and technological
4 reasonableness must be considered when drafting those rules.

5 The Department of Health has the authority by
6 statute to adopt reasonable rules that affect public health.
7 This portion of the rule is not reasonable by any measure.

8 The Health Department staff has suggested that
9 implementation of the nitrate requirements would be waived
10 for a certain period of time to give technology a chance to
11 develop.

12 Our position is that until the technology exists
13 and until the cost is more reasonable and until the Health
14 Department can quantify, the nitrate issue should be left
15 alone.

16 The secondary deficiency is drainage. Perimeter
17 drains are installed in over 9,000 systems every year across
18 the state. We have not seen a high incidence of failure of
19 the drains. This rule substantially changes the way the
20 drains are installed, for no apparent reason.

21 The requirements for Chapter 4 have been shown in
22 field testing to be impractical and unworkable. Some of the
23 materials don't work. The requirement for aggregate
24 backfill in the trenches makes the issue of installing pipe
25 in extremely tight tolerances as demanded unnecessary and

1 redundant.

2 This portion of the rule is so controversial that
3 it has not been developed to anyone's satisfaction. This is
4 unacceptable because it sidesteps the process of public
5 review and comment.

6 The third area of deficiency is experimental
7 systems. One of the Health Department's stated goals in
8 this rule is to promote the use of new technology. This
9 rule adopts only one new technology, gravel-less trenches
10 which have been used in other parts of the country for
11 years.

12 The rule in many ways discourages the use of new
13 technology. The technical staff has three classes of
14 systems -- conventional, alternative and experimental.

15 Chapter 8, which deals with experimental systems,
16 only serves to define conditions over which new technology
17 might be tried. It requires expensive but not necessarily
18 new field testing (unintelligible). It does not recognize
19 field testing by manufacturers and National Sanitary
20 Foundation in many other states.

21 The rule cites department standards, does not
22 include them or adopt them by reference. Once again, we are
23 subverting public review and comments. That makes it very
24 difficult for manufacturers to bring improved product to
25 Indiana.

1 Each experimental system is approved one at a
2 time, creating a bottleneck at the state level. There is no
3 means of transition from experimental to alternative class
4 of systems.

5 This means that no matter how successful the
6 technology might be in the field, it's always experimental
7 under this rule. This is a huge deterrent to adopting new
8 technology and for builders and their customers who are not
9 interested in having experiments installed in their back
10 yards.

11 Mortgage lenders will be very nervous about
12 financing a home when the resale value is dependent upon an
13 experimental system.

14 This is also a major problem for reapplication.
15 If and when technology is developed to meet the standard,
16 the process (unintelligible) will take years.

17 Our solutions are simple. The rule needs more
18 input from all stakeholders. The Health Department staff
19 needs to engage in this process instead of posturing.

20 The rule with the changes proposed by the
21 Wastewater Management Committee and by our committee are
22 good starting points.

23 We respectfully request the Indiana State Board
24 of Health to recall this rule. Thank you.

25

1 JAN BERG:

2 Bill Grant.

3
4 BILL GRANT:

5 I'm Bill Grant. That's G-r-a-n-t. And I'm the
6 administrator of the Lagrange County Health Department in
7 Lagrange, Indiana.

8 My background basically before I became involved
9 in a public position, I was in medical research in
10 immunology and biology and transplant rejection research and
11 so on. I was almost 20 years in that profession. I've been
12 about 15 years now in public health.

13 I think we heard earlier from Mr. Watkins who
14 represents one of the largest health departments in the
15 state. Lagrange County is in the other end of the spectrum,
16 and we are one of the smallest. Our county has all of about
17 30,000 people, and 40 percent of them are Amish.

18 Now, even though we have a difference in size, I
19 think Mr. Watkins and myself concur on the present rule.

20 Give a little background -- in 1989 we figured
21 out that there was a problem in septic systems. That was
22 based on basically some scientific evidence. It was also
23 based on some experiments that we had established in our
24 county.

25 And being somewhat familiar with the scientific

1 process, we felt that the problem of sewage treatment,
2 especially in the rural areas, basically could be identified
3 with the method that we were trying to treat sewage. And
4 that was almost a hundred percent septic system.

5 In 1992 we began a program in our county to
6 address some of these issues. And that program has expanded
7 over these years.

8 And at the present time, we have in our county
9 installed -- and I'm not really sure of the exact number,
10 but I know it's over a hundred alternative systems for
11 sewage treatment onsite, basically. That was what we've
12 been able to accomplish.

13 When we started, way back when, we found that we
14 had some support from ISDH. And especially in Mr. Howard
15 Cundiff who I have lots of respect for, but that doesn't
16 mean that I can't disagree.

17 So how did we get from 1992 to where we are today
18 with a proposed rule? A rule that would cripple our county,
19 reduce flexibility, and it may virtually eliminate much of
20 what we have accomplished to date.

21 The problem is not only does the rule not address
22 the very basic issue of the problem, but it also increases
23 the cost beyond what I feel is a reasonable increase.

24 To enforce this rule, the Health Department will
25 be forced to add additional people, which means we pay more

1 salaries, we have more benefits, more taxes to pay. We have
2 to set up office space, buy even paper and pencils, and all
3 that adds up, just to enforce the new rule.

4 I think the problem that I have with this is the
5 philosophy of how we're approaching a problem.

6 As I mentioned, in our country we started
7 addressing this back in the early 90s. We developed a
8 sewage treatment program in our country back then, and that
9 program was county-wide to where we could address some of
10 these issues.

11 To date, we have -- we'll have soon removed
12 approximately 4,000 septic systems from use and replaced them with
13 other methods of sewage treatment.

14 In addition to that, we have developed what is an
15 alternative to sewage treatment for the septic systems. And those
16 -- that alternative happened to be a sub-surface constructed
17 wetland.

18 We have, like I said previously, somewhere over a
19 hundred of these systems in the ground. They've been in the
20 ground ten, eleven years. We have them not only for single-
21 family homes, but we have them for industries such as
22 motels, factories, industrial parks. We have wetlands
23 treating sewage from 600-unit campgrounds and county parks.
24 And in addition, even one that treats the sewage from 220
25 homes.

1 The philosophy that we approached this problem
2 was not through regulations. We accomplished this without
3 writing a single rule or creating a new regulation.

4 Septics have been problems for years. Are
5 septics better than putting wastewater into a ditch or on
6 the ground? Absolutely. I don't think anybody would
7 disagree.

8 But the problem is that as we have changed their
9 lifestyles, the old, old system, the septic, has not been
10 able to keep pace. And that was one reason that we started
11 this program back in the early 90s.

12 I think the problem now has come to the point
13 where everybody realizes that we really do have a problem,
14 and in some cases this problem could be considered a crisis.
15 And I think there's some evidence that supports that
16 statement.

17 And so many times when we have a crisis, after we
18 have ignored the problem for a number of years and allowed
19 it to become a crisis, our first response to this is to
20 address the problem through crisis management.

21 And so what happens is we get a rule that is very
22 difficult for us to even consider how we're going to enforce
23 it.

24 I feel that this rule will not solve the problem.
25 In fact, it will make it worse. We have a rule that will

1 increase cost, increase paperwork, and actually increases
2 the complexity of trying solve this problem.

3 I think that, in addition to that, this rule will
4 actually void much of the progress that we have made in our
5 small county toward sewage treatment.

6 I will ask -- and I will give you this document
7 which explains somewhat clearer -- that I would ask that the
8 Executive Board reconsider this rule. Have input and
9 consider other methods to improve really a critical basic
10 service that we need to be providing to the people of
11 Indiana.

12 I think what we need is we need solutions, not
13 regulations. I think we need a reasonable and
14 scientifically valid program to develop a solution.

15 This should not be a difficult problem because
16 sewage treatment is not rocket science. Things that we know
17 about sewage treatment today are remarkable. And if we can
18 take that knowledge and address this issue, I am absolutely
19 positive that we can come up with a solution that will fit
20 everybody in a reasonable manner.

21 And thank you for your holding this meeting.
22 Thank you.

23
24 JAN BERG:

25 Thank you. We'll have a couple more people come

1 up and then we'll take a break because I'm in a two-hour
2 parking spot.

3 Bob Boseman?

4 (No response.)

5 Ian Steele?

6
7 IAN STEELE:

8 My name is Ian Steele, and that's I-a-n, S-t-e-e-
9 l-e. And I represent myself as a citizen of LaPorte County.
10 I represent the town of Michiana Shores in my position as
11 town council president.

12 And also bring expertise as a practicing
13 geologist at the University of Chicago, where I deal with
14 similar problems as addressed in this hearing.

15 I wish to discuss the proposed -- the proposal
16 from the state-wide, small town, and especially personal
17 point of view.

18 A source of nitrates is usually attributed to
19 agricultural fertilizers, septic systems and recreational
20 fertilizers, including parks, lawns and golf courses.
21 Indiana is an agricultural state. And as such, agricultural
22 fertilizer is common.

23 And while it is difficult to assign amounts, I
24 refer you to a study done in Portage County, Wisconsin,
25 where a research -- and I give a reference there --

1 indicates that 89 percent of nitrates in groundwater is due
2 to agricultural, and only 9 percent to septic systems, and
3 one percent to recreational.

4 Similar results have been published for studies
5 in Iowa and Long Island. And I again give the references.

6 Certainly, such numbers cannot strictly apply to
7 Indiana, but strongly suggest that regulations on septic
8 systems will not solve the apparent problem because on a
9 regional or county-wide scale, they represent a small
10 fraction of the problem.

11 On a small-town or residential scale, the septic
12 systems must become more significant in contributing
13 nitrates, especially in the absence of public sewer systems.

14 While each town will differ, I suggest a few
15 potential problems based on the small town I represent.

16 Within this town is a small stream that drains
17 approximately five square miles. Groundwater contributions
18 must be through groundwater from our individual septic, but
19 in addition, a mobile home park is licensed to dump 20,000
20 gallons of treated water into that stream.

21 I understand that one particular trailer park
22 conducts their own testing procedures for water quality. My
23 inquiries at the county health department show that this
24 park is delinquent in filing reports.

25 Likewise, this stream drains an area which

1 includes a golf course. To my knowledge, that is no control
2 of applied fertilizer which most certainly is used to
3 maintain the rough grass.

4 The proposed controls on individual septic
5 systems may have little effect on nitrates unless controls
6 are placed on these other nitrate contributors.

7 On an individual basis, the time scale for
8 nitrate reduction will be maybe 20 years on existing septic
9 systems. As existing septic systems come into compliance,
10 there is also a question of maintenance. How will yearly
11 required maintenance be monitored?

12 Studies have shown in Arlington, Texas, that a
13 large number of septic systems are not maintained and do not have
14 the desired effect.

15 A much better solution that would most certainly
16 solve the nitrate problem in residential areas in the
17 shortest time scale, eliminate septic contributions and
18 benefit all involved would be for the state of Indiana to
19 take the lead in the installation of public sewer systems by
20 matching the cost on a dollar-per-dollar basis.

21 The nitrate problem contributed by individual
22 septic systems would be eliminated, and in residential areas
23 in maybe a 5-year time scale, private maintenance would be
24 no problem and compliance would not be delayed.

25 I appreciate the time. Thank you.

1
2 JAN BERG:

3 Thank you.

4 Georgia Mareska?

5
6 GEORGIA MARESKA:

7 Thank you. My name is Georgia Mareska, G-e-o-r-
8 g-i-a, M-a-r-e-s-k-a. I'm a broker with Liston-Brown
9 Realtors, and I come here today to represent the LaPorte
10 County Association of Realtors.

11 Our first position is that we fully and
12 completely support the position of the Indiana Association
13 of Realtors and the Indiana Builders Association in
14 opposition to this proposed rule change.

15 Besides what they list in their position paper,
16 we have some special concerns here in LaPorte County.

17 A particular concern starts with the why of this
18 change. Now, I understand that we must keep up and we must
19 maintain our environmental integrity.

20 However, we wonder why they are making changes
21 when they based them on what can surely be inadequate
22 criteria and the use of the NRCS soil maps and nitrate
23 leaching index. These are out of date. They were not
24 designed for this purpose. There are no studies for small
25 areas, and small areas are what these septic are in.

1 And they were not meant -- or done even
2 currently. They're out of date, as I said.

3 We do not have a consistently described problem.
4 In my experience of almost 25 years as a realtor, for
5 instance, I very commonly take water samples into the health
6 department to be tested. And in that period of time, I have
7 had one water test where there were high nitrate levels.
8 And that particular property was adjacent to a very large
9 agricultural area.

10 It seems as though certain water tests should be
11 part of the major criteria.

12 As to what is wanted with these requirements,
13 first off, the most initial concern is the expense of the
14 systems. Very high expense. The state has quoted and we
15 have heard time and time again a number that many people in
16 this business, involved in septic, dispute. We think it
17 should be certainly much higher.

18 We have also had notice by way of the publication
19 of local and county newspapers where if these proposed
20 systems were tested, almost 50 percent of them were found to
21 be not working. Why in the world would somebody require a
22 system that is not approved to work?

23 Maintenance cost to the homeowners wherein it's
24 stated anywhere from two to four hundred dollars certainly
25 would increase year by year by year.

1 Plus, the cost to the Health Department and
2 thereby the average cost to the individual taxpayers. To
3 increase yearly these costs in such an economic area is
4 unconscionable.

5 And one of our big concerns as realtors is what
6 effect that will have on existing homes and existing septic
7 systems. Much of these discussions focus only on new
8 construction, and we do deal in new construction. But the
9 majority of our work is done with existing construction or,
10 as we call it sometimes, pre-owned homes.

11 How can we know how to advise our client as to
12 what they're going to face, what might be expected of them
13 in the sale of a home?

14 The Health Department tells us that these things
15 are to be considered on a case-by-case basis, which sounds
16 to be a very arbitrary system indeed.

17 Our clients look to us to give them information
18 and advice in this area. It's a very scary thought for us.

19 The impact on LaPorte County is tremendous.
20 While all of Indiana would be impacted by this, I truly
21 believe that LaPorte County would certainly bear an even
22 heavier impact, just simply because of the total number, 89
23 percent of our area in this county being under these
24 restrictions for nitrate abatement. Eighty-nine percent of
25 the second largest county in Indiana. Talk about reducing

1 our buildable area.

2 The increases in prices in the construction of
3 these homes would make them very unaffordable. Not to
4 mention what it could possibly do to existing homes, wherein
5 they could very likely become unsalable and therefore have
6 no value. And who among us does not have the vast amount of
7 our funds of our value as a human being, monetarily,
8 invested in our homes?

9 The economics of Indiana are very hard right now.
10 The economics of LaPorte County are especially hard. In the
11 last year we have lost at least three major companies here
12 in LaPorte alone.

13 This is also steel country. We're all affected
14 by the steel industry.

15 We have no idea what our taxes are going to be
16 this year because the state has not finalized the new
17 reassessment.

18 To give you an idea, in LaPorte County alone as
19 of a check I did just last week, there were 44 properties
20 actively marketed at the moment that have been repossessed.

21 These are not properties that are in the process
22 of repossession; they are in the process of foreclosure.
23 They have been through the process and they are now on the
24 market.

25 Indiana has the ill fortune of leading the nation

1 in bankruptcies and foreclosures. Certainly, this proposed
2 septic change would also have a big impact on these numbers.

3 In conclusion, I'd like to say that certainly the
4 LaPorte County Association of Realtors is committed to
5 promoting home ownership first of all, because that's our
6 American dream. We're committed to promoting LaPorte County
7 because this is our home and where we work and where we
8 think it's great for others to live and work.

9 And we are certainly concerned with the health
10 and safety of the citizens of LaPorte County, as well as the
11 entire state of Indiana.

12 Our criteria often in evaluating property is for
13 its highest and best use, and good management of the
14 environment certainly increases that value.

15 But, please, can the State of Indiana Health
16 Department use common sense? Does it really make sense to
17 promulgate new rules that create heavy financial burdens
18 when there are still questions as to whether it's truly
19 needed and whether those proposed rule changes even work at
20 what's needed?

21 At the very least, the position of the State
22 Health Department, the very least it's premature, and the
23 very worst, it's certainly irresponsible for the State of
24 Indiana.

25 Thank you.

1

2 JAN BERG:

3 Thank you. We'll take an approximate ten-minute
4 break at this time.

5

6 (Recess was taken.)

7

8 JAN BERG:

9 We're going back on the record now in the hearing
10 of Cause No. 03-04. Next speaker is Michael Arnett.

11

12 MICHAEL ARNETT:

13 My name is Mike Arnett, A-r-n-e-t-t. I'm here in
14 the capacity of chamber -- Greater LaPorte Chamber of
15 Commerce, chairman of the board.

16 And our research on this rule and the financial
17 burden as well as the crippling impact on the economic
18 development would echo that of many of the previous
19 speakers.

20 With that in mind, I would like to submit a
21 resolution from the Greater LaPorte Chamber of Commerce.

22 Whereas, the Indiana State Department of Health
23 is proposing a new septic rule for the State of Indiana;

24 And whereas, the secondary system is designed to
25 reduce nitrogen leaching through the soil from onsite sewage

1 systems to insure groundwater quality standards in areas
2 that contain very course sand to very refined sand;

3 And whereas, 89 percent of LaPorte County soils
4 require the use of secondary septic systems;

5 And whereas, the proposed Rule No. 410 IAC 6-8.2,
6 if adopted by the State of Indiana, would cost LaPorte
7 County builders between \$8,000 and \$10,000 per septic system
8 to install;

9 And whereas, these proposed rules would cost the
10 residents of LaPorte County up to \$2,000 annually to
11 maintain the system;

12 And whereas, the Indiana State Department of
13 Health mandates a reduced nitrate from 327 IAC 2-11, Rule
14 11, groundwater standards, which states that the technical
15 and economic reasonableness be considered when adopting
16 rules;

17 And whereas, the Indiana State Department of
18 Health is required to consider technical and economic impact
19 and has not done so;

20 Now therefore be resolved that the board of
21 directors of the Greater LaPorte Chamber of Commerce is
22 against the adoption of proposed Rule 410 IAC 6-8.2 without
23 technical and economic assessments being completed by the
24 Indiana State Department of Health.

25 The original of this resolution was presented

1 earlier to the reporter. Thank you.

2

3 JAN BERG:

4 Thank you.

5 Doug Miller?

6

7 DOUG MILLER:

8 My name is Doug Miller. I'm owner of D.S. Miller
9 Construction, and I'm also the president of the Builders
10 Association of Elkhart County.

11 I'd like to go on record as saying that the
12 Builders Association of Elkhart County is one hundred
13 percent opposed to the adoption of this rule that's on the
14 table today.

15 And as a builder who would have to survive under
16 that particular rule, I find that the way it's written, it
17 would severely inhibit my ability to do business in Elkhart
18 County.

19 For all the reasons that we've heard this
20 morning, the one that I really think is most -- it's going
21 to drive the cost of single-family residences beyond the
22 reach of most individuals. And it's most definitely going
23 to impact the viability of septic repairs on existing homes,
24 and I think that's a crying shame that the Executive Board
25 of the Health Department hasn't considered.

1 The other issue is that I've been a builder all
2 my life. I've been doing this for 28 years, and for the
3 last ten years, been using the current rule that's in effect
4 for the septic systems.

5 You've heard from Bob Watkins and Don Schnoebelen
6 and Terry Herschberger, all people from Elkhart County. And
7 you've heard that under these current rules, we have had
8 little or no failures.

9 I personally have about 400 systems, and I have
10 yet to receive a phone call that there's a failure.

11 I guess call me old-fashioned, but if it ain't
12 broke, don't fix it. Thanks.

13
14 JAN BERG:

15 Thank you.

16 Tom Wickart?

17
18 TOM WICKART:

19 I'm Tom Wickart. I'm a semi-retired developer,
20 builder from Elkhart, Indiana.

21 This law will probably not financially impact me
22 because I'll probably be retired totally before it goes into
23 effect.

24 I have been developing ground and building solely
25 affordable housing for the last 30 years. All of these

1 projects, the sewage was processed onsite and the stormwater
2 was retained onsite.

3 From what I'm reading, the biggest environmental
4 impact facing the State of Indiana is the separation of
5 storm sewers and sanitary sewers.

6 Several builders -- I'm proud -- I feel proud
7 that I have contributed to this problem. That's number one.

8 Number two is speaking for the affordable housing
9 market. Something -- you know, we've heard estimates of
10 cost of from ten to \$14,000 for those systems. Now, that's
11 a builder's cost. He's going to mark it up. He's got to
12 mark it up.

13 And since it's so state of the art, he's going to
14 really mark it up because the customer is going to come back
15 to him. They're not going to come back to the Indiana Board
16 of Health.

17 Somebody building a \$500,000 -- this extra cost
18 on a \$500,000 home -- this extra cost is probably less than
19 they're going to spend on wallpaper and curtains.

20 But somebody spending \$100,000 for an affordable
21 house, this could break the deal. So, once again, the
22 little guy is going to get stiffed by this particular issue.

23 Thank you.

24
25 JAN BERG:

1 Thank you.

2 Frank Schreiber?

3

4 (No response.)

5 Gretchen Hellman?

6

7 GRETCHEN HELLMAN:

8 My name is Gretchen Hellman, and I work for the
9 Builders Association of Elkhart County.

10 I'm not going to say what many others have said
11 more eloquently.

12 Affordability -- I know from our association you
13 have heard Doug just recently and Tom a moment ago -- is the
14 bigger concern because septic systems that cannot be
15 supported by even the technicians and the professionals in
16 the industry.

17 This rule raises more questions than it provides
18 answers. I'd like to know -- after two public hearings --
19 and I've even been present at this one -- but I know the
20 first one had no one in support of it. This one seems to
21 have no one in support of it.

22 Who are the proponents? And why is the State
23 Board of Health staff not listening to these people for
24 their input? Big question.

25 Thank you.

1
2 JAN BERG:

3 Thank you.

4 Patricia Rogers?

5
6 PATRICIA ROGERS:

7 My name is Patricia Rogers. I'm a real estate
8 broker in LaPorte for Liston-Brown Realtors.

9 And I am asking that the proposed Rule LSA
10 Document No. 02-321, request that it be withdrawn.

11 In LaPorte city, there are very few buildable
12 lots left unless a home is torn down. The only chance
13 people have to build a new home is out in the country.

14 If they have to face these new rules, the
15 affordability, people, is not going to be there.

16 We deal mainly with homes that are existing.
17 Nothing really has been said. It's all on a case-by-case
18 basis. That makes us very nervous.

19 We do not know how to instruct our sellers, what
20 our buyers are going to expect, what the future of real
21 estate is going to be if this is adopted.

22 We were given a presentation earlier this year by
23 the LaPorte County Health Department outlining some of the
24 proposed information that's in this document. And the
25 biggest thing that stuck out in my mind is they have several

1 test systems currently in use. Fifty percent have failed.
2 Fifty percent. That is an unacceptable number.

3 I urge that this proposed rule be withdrawn at
4 this time. Thank you.

5
6 JAN BERG:

7 Thank you.

8 Bob Caper?

9 (No response.)

10 Larry Huber?

11
12 LARRY HUBER:

13 My name is Larry Huber, H-u-b-e-r. I'm a soil
14 scientist, soil classifier. And I've been working in
15 LaPorte County for the last 30 years, and my job is to
16 understand soils.

17 The way this rule is written, LSA IAC 321, drains
18 cannot be addressed. The issue of nitrates is not a
19 problem.

20 The problem with nitrates comes from agricultural
21 use. We're a big dairy farm area, hog operations, a grain
22 farm area, which uses a tremendous amount of nitrogen.

23 The fertilizers from the waste manure is going on
24 top of the ground, and that's not the areas that we're
25 developing into the country, into the county.

1 And all of the water tests have been run. We're
2 still yet to see any nitrate problems in our water systems.

3 But yet the building industry, which is the major
4 part of the survival of 9/11 and the means for the whole
5 economy of the United States and in LaPorte County and other
6 counties, they're being impacted by the good people of the
7 State Board of Health and IDEM.

8 Unfortunately, IDEM has no concept of soils. The
9 State Board of Health has a soil scientist that understands
10 soils.

11 This rule that they're proposing is impossible.
12 This is not even something that should be considered in the
13 state of Indiana. It impacts every aspect from the building
14 to the soil scientist to the contractor, the septic
15 contractor, the concrete -- everybody is impacted by this
16 new rule.

17 Again, nitrates are not a problem. Even in
18 Granger, Indiana, where they've run studies where they've
19 had a lot of septic failures, they've yet to find any more
20 than two or three percent nitrates in the water.

21 And you have to understand, that source of
22 nitrates is probably from all the golf courses that surround
23 all these people in Granger and all the fertilizers that are
24 put on the by the people that maintain all these yards in
25 that area.

1 The loading rate chart that's set up has some
2 flaws in it. We need to really address how the loading
3 rates, how it should be done.

4 We have a cost of septic systems that's been
5 addressed numerous times today. And it will affect the
6 people of Indiana trying to get an affordable house, whether
7 it's a stick-built house or a modular house. This
8 additional \$7,500 to possible \$12,000 additional cost will
9 either make the sale of a house or lose the sale of the
10 house.

11 The other concern is on the existing homes. Some
12 of these homes cannot even meet the guidelines of this new
13 proposal or the new nitrate situation on existing homes that
14 are trying to be sold by the realtors.

15 I strongly urge, as a soil scientist and one who
16 has studied the soils and the sands across the northern part
17 of Indiana -- and that's been my job for the last 30 years.
18 I am opposed to this rule as well as the other soil
19 scientists are opposed to this rule.

20 And I would like to see this LSA 02-321 looked at
21 in further detail before it is even thought about being
22 passed.

23 There are some specific issues that need to be
24 addressed here. And, unfortunately, it appears to me that
25 it's being ramrodded by IDEM and by the State.

1 I wish that they would just take a further look
2 at this before it goes into effect. Thank you.

3
4 JAN BERG:

5 Thank you.

6 Richard Wisa? Looks like W-i-s-a? Wise? I'm
7 sorry.

8
9 RICHARD WISE:

10 I'm Richard Wise. And I'm no stranger to this
11 industry. Those who are out there know me and know that I
12 have worked in this industry in several different
13 capacities, once with IDEM as a plan reviewer for
14 facilities.

15 Several years with the State Department of
16 Health, and with the County Health Department of Marion
17 County.

18 Spent up to recently, past 3-1/2 years with the
19 Indiana Rules Community Assistance Program, which is a non-
20 profit organization that works with small communities to
21 help them to develop infrastructure for draining water and
22 wastewater.

23 Currently, I'm here as an individual -- I want to
24 clarify that -- and as an interested party. I'm a
25 participant in the Indiana Onsite Wastewater Professional

1 Association as well as a member and participant of the
2 Indiana Environmental Health Association, Wastewater
3 Management Committee.

4 I have several comments that I'd like to make in
5 response, but actually, I'm not going to make them today.
6 I'll submit the other comments in writing by the August 13th
7 date.

8 I do have one comment with respect to the rule's
9 language in the category Section 5, Section 6 and Section 7.

10 Section 6 defines cluster onsite systems --
11 excuse me -- Section 5 defines cluster onsite systems.
12 Section 6 defines commercial facilities. And Section 7
13 defines commercial facilities onsite systems.

14 And I'll start with Section 6. Commercial
15 facility as defined, and I'm going to track down to Item No.
16 7 where it says any group of residences served by a cluster
17 system.

18 That statement in there clearly constricts the
19 definition of a commercial facility. And I'll state that.
20 Any building or place not used exclusively as residences or
21 residence outbuildings. Says included but not limited to.

22 It's Item No. 7. That's the item that I just
23 referred to.

24 I think that the intention here by the state is
25 to include cluster systems as a commercial facility under

1 the review -- plan review and approval under the State Board
2 of Health as a department, as it's defined per the rule.

3 I think a better way to handle that and to
4 provide some clarity without that statement of conflict is
5 to just strike that statement, Item No. 7 of Section 6, all
6 together and include an additional statement under Section
7 5, cluster onsite systems.

8 At the end of that statement you want to add
9 another statement, a cluster onsite system is a commercial
10 facility offsite system.

11 So if they would add that statement to Section 5
12 and then move down to Section 7 and add an additional
13 statement to Section 7 -- and I'll read what it is and what
14 it should say.

15 Commercial facility onsite system means an on-
16 site facility for a commercial facility, period.

17 I think what it should say to provide clarity, is
18 a commercial facility onsite system means an onsite system
19 for a commercial facility or a cluster onsite system as it's
20 defined in Section 5.

21 I think if they made that change, that would
22 provide some clarity and eliminate some conflict in language
23 and also reduce the burden of having to do a lot of
24 overhauling throughout the rules for commercial facility on-
25 site systems is stated frequently and where commercial

1 facility is stated frequently, too.

2 Then I just want to restate I do have other
3 comments, but I'll submit those comments in writing.

4

5 JAN BERG:

6 Would you also include in your written comments
7 the section you just mentioned and your argument in regard
8 to Sections 5 and 7?

9

10 RICHARD WISE:

11 Yes, as I stated today.

12

13 JAN BERG:

14 Okay. Thank you.

15

16 RICHARD WISE:

17 Thank you.

18

19 JAN BERG:

20 Tom Buszynski?

21

22 TOM BUSZYNSKI:

23 My name is Tom Buszynski, B-u-s-z-y-n-s-k-i. I'm
24 the environmental supervisor at the LaPorte County Health
25 Department.

1 LaPorte County Health Department has reviewed the
2 preliminary adopted Rule 410 IAC 6-8.2 as published by the
3 Indiana State Department of Health, and they submit the
4 following comments:

5 LaPorte County cannot support the proposed rule
6 changes, primarily due to the section on requirements for
7 secondary treatment and nitrogen reduction, and they believe
8 the nitrogen reduction is needed in residential and
9 commercial sewage disposal systems.

10 The LaPorte County Health Department is concerned
11 that this proposal is based on presumption rather than on
12 scientific evidence.

13 We understand that according to Indiana Code 13-
14 18-17-5 that state agencies are required to apply
15 groundwater quality standards established under 327 IAC 2-
16 11-1.

17 If the State Department of Health were interested
18 in truly enforcing the standards, then all systems must
19 provide for nitrogen reduction.

20 Simply due to the way the law reads, it must meet
21 10 milligrams per liter or less before reaching the soil,
22 not just sandy soils. The law doesn't allow for the
23 conductivity of soils, the vegetation planted or the
24 viability.

25 How can the state mandate that only sand-based

1 soils require (unintelligible) without scientific studies of
2 the leaching potential of all soils?

3 The LaPorte County Health Department water
4 quality laboratory has been analyzing over 3,000 drinking
5 water samples for nitrates.

6 Since 1991, 2,960 samples have been analyzed; and
7 188 of those samples exceeded the ten milligrams per liter
8 level. And a moderate percentage of those 188 samples were
9 on new constructions.

10 This would clearly demonstrate that the
11 groundwater already exceeded the maximum contaminant levels
12 before septic systems were even being utilized.

13 This obviously indicates that there are other
14 unregulated sources of nitrogen being introduced into the
15 soil and eventually the groundwater long before the
16 residential and commercial sewage disposal system was
17 utilized.

18 It's clearly obvious to not only the Health
19 Department staff but the general public as well that the
20 other sources are major contributing factors in creating the
21 sheer volume of nitrogen being introduced into the soil.

22 We find it difficult to justify the need for
23 tremendous expense for the homeowner when the average
24 homeowner and business contributes the least to such an
25 unregulated problem.

1 LaPorte County also finds it difficult to support
2 a document or rule that fails to prove that a problem
3 exists. And, secondly, has no technology that will support
4 the system outside of a laboratory as a solution to the
5 potential problem.

6 LaPorte County would like to have scientific
7 evidence to substantiate the State Board of Health's claim
8 that the soil with high percentages of sand does prevent the
9 leaching of the nitrogen.

10 Secondly, the County also believes that there is
11 a serious deficiency in the state's impact statement,
12 especially in the statement that the County will suffer no
13 impact from this rule.

14 At current building rates in this county, we
15 could be attempting to insure over 1,500 homes are either
16 maintaining or operational under maintenance contracts for
17 10-acre tracts which they are allotted to utilize in lieu of
18 connection systems within five years.

19 The county will be forced to pursue additional
20 staff members to assist in the maintenance portion of this
21 rule. And without the additional staff, the county could
22 not enforce the requirements of these systems, and there
23 wouldn't be any way for the county to prevent property
24 owners from obtaining permits on less than ten acres.

25 In addition, the allowance for the alternative

1 systems doesn't address the public health and state's belief
2 that (unintelligible) contribute the nitrates in the
3 groundwater.

4 LaPorte Health Department recognizes the need for
5 updating the rule. There are many deficiencies in the
6 existing rule that the proposed rule does address and
7 clarify.

8 However, we cannot support this knowing the
9 tremendous lack of data that would support this, and it
10 would be extremely difficult to justify to the people that
11 depend on the county not only for health but for education
12 and guidance.

13 The Indiana Environmental Health Association and
14 the Wastewater Management Committee has spent the past six
15 months reviewing this preliminary document line by line.

16 The committee is made up of local health
17 department personnel, Indiana State Department personnel,
18 professionals -- professors from Purdue University's
19 agronomy department, manufacturers and industry
20 professionals have met weekly to make numerous revisions
21 that not only address soils but also would allow for more
22 flexibility in onsite wastewater treatment system designs.

23 This version of the rule does away with the
24 nitrate leaching index and relies solely on certified soil
25 scientists, local and state department of health expertise

1 and extensive knowledge.

2 Therefore, the LaPorte County Health Department
3 does fully support the revisions made by the Wastewater
4 Management Committee, and believes that the state recognizes
5 the importance that this committee has played in providing
6 the state with valuable and empirical data and expertise.

7 The fact that the state personnel not only
8 attended these meetings regularly but participated and
9 assisted in revising the rule based on fact, knowledge and
10 collaboration of many experts in the wastewater field from
11 around the state demonstrates the Indiana State Department
12 of Health's interest in public health and local concerns.

13 The LaPorte County Health Department is genuinely
14 concerned about the health and safety of the public, not
15 only in LaPorte County but also in the whole state as well
16 as the surrounding states.

17 In the revision stated by the Wastewater
18 Management Committee, they not only clarified the previous
19 rule but also (unintelligible) in the future.

20 Therefore, it is the hope of the county --
21 LaPorte County Health Department that the executive
22 committee -- we ask that the executive committee withdraw
23 the rule -- the proposed rule -- and address and hopefully
24 adopt the version presented by the Wastewater Management
25 Committee in its entirety, which will allow for future

1 collaboration between the state and local health departments
2 and all industry professionals. Thank you.

3
4 JAN BERG:

5 Thank you.

6 Jim Pressel?

7 (No response.)

8 Lance Gould?

9
10 LANCE GOULD:

11 Good afternoon. My name is Lance Gould, G-o-u-l-
12 d, and I represent Marshall County Builders Association.
13 I'm also on the board of directors of that association as
14 well.

15 Marshall County Builders Association followed the
16 Indiana Builders Association's position rejecting the rule
17 that's presented with the LSA Document 02-321.

18 It's not just what they're trying to do, but they
19 haven't identified to us the -- all the cost that's involved
20 with the statement.

21 What I mean is, it's not just the cost to
22 install, which is going to be impacting myself as a builder
23 and other builders. It's going to impact the cost of who's
24 to control the paperwork and all that kind of bureaucracy
25 thing. It's going to impact the county as a taxpayer.

1 I live in Bremen, Lake of the Woods, which has a
2 sewer district. And I've been there since the time when the
3 sewer district became solvent, which is the year between '91
4 and '92.

5 Since then, absolutely -- including last night,
6 we just had a price increase of \$7.08 for a slush fund for
7 our particular situation to handle our rain water.

8 The reason why we had a sewer system installed in
9 the first place was because of the nitrate problem. At
10 that time Ball State did a study in which they said that 98
11 percent of the problem of nitrate that was coming into our
12 lake was from agricultural, and we do have a very nice golf
13 course right next to our lake. Which meant that two percent
14 was coming from failed or leaking septic systems.

15 Those systems were repaired. That meant that a
16 hundred percent of the nitrate was actually going into our
17 lake.

18 Since then, we have done other studies from the
19 Kankakee Watershed Project and also part of a conservation
20 club of that lake, and the septic system and sewer system
21 that was installed has not changed the amount of nitrate
22 going into our lake.

23 So, leave that as it may, I guess. You know,
24 nitrate is still there. The farmers are still putting it on
25 their fields, which we reap the benefits of that.

1 You know, insofar as the golf courses are, I'm a
2 golfer. I like the green course.

3 However, in terms of groundwater, it's still
4 there and it's still impacting us.

5 We also do water studies from individual homes
6 around the lake from time to time. And that has not
7 affected our particular groundwater.

8 However, a conservation club is also doing a
9 water study from the watershed, and realizing that when we
10 have rain, we've got higher nitrates. When it doesn't rain,
11 we don't.

12 So the counts flex back and forth, back and
13 forth, but it's still not affecting our drinking water,
14 although it is going into our lake.

15 The other thing that I have is that Marshall
16 County is coming up with and trying to adopt a new
17 comprehensive plan for dividing up our acreage for
18 development.

19 And the fact that they had -- were kind of
20 spreading apart from each other, and now they're thinking
21 that wasn't such a good idea. That in order to get
22 municipalities and sewer and water and all the things that
23 we take for granted, if we cluster people together, then
24 we're able to come up with these septic systems and water
25 systems and be able to treat water and septic the way it's

1 supposed to be treated.

2 However, from the ten years that I've been at
3 Lake of the Woods and the studies we've done is that it has
4 not impacted our problem with the nitrates.

5 So in regards to that, I'm going to say as a
6 representative of the Marshall County Builders Association,
7 that I say that LSA Document No. 02-321 is not a reasonable
8 rule based on what the rule is being presented to us today.

9 Thank you.

10
11 JAN BERG:

12 Thank you. Charles Unser?

13 (No response.)

14 Bob McKean?

15 (No response.)

16 Dave Keller?

17 (No response.)

18 We've gone through these. Is there anyone here
19 that I have not called your name that would like to speak
20 for the record today?

21
22 SPECTATOR:

23 There was a list of comments that I wanted to
24 submit for a gentleman that could not be here today.

1 JAN BERG:

2 Yes, certainly.

3

4 SPECTATOR:

5 The gentleman's name is Dan Bloodgood, and he
6 wasn't sure if he was going to make it here today and told
7 me if he couldn't make it that I would submit his comments
8 on his behalf.

9 These are his comments. I'm not going to go
10 through them, but for the record these are his comments.
11 They're from Mr. Dan Bloodgood. That's spelled B-l-o-o-d-g-
12 o-o-d.

13

14 JAN BERG:

15 Okay. Do you know who he represents?

16

17 SPECTATOR:

18 He's a member of the Indiana Environmental Health
19 Association Wasterwater Management Committee. He's an
20 interested stakeholder.

21

22 JAN BERG:

23 Okay. Thank you.

24 Is there anyone who's changed their mind and
25 would like to come up and speak?

1 (No response.)

2 Seeing and hearing no one else would like to be
3 heard, I want to thank each of you for coming today, for
4 your presentation. I'm sorry that this took so long.

5 My report of the hearing will be in writing to
6 the Executive Board of the Indiana State Department of
7 Health for their consideration before final adoption.

8 I want to remind everyone there will be a third
9 hearing held in Seymour, Indiana on August 6th, next
10 Wednesday, at 1:00 o'clock p.m. and just to provide people
11 another opportunity who haven't made it to Indianapolis or
12 didn't make it to LaPorte.

13 These proceedings pursuant to notice are hereby
14 concluded. This cause is therefore adjourned until final
15 order of the Executive Board.

16 Thank you all for coming.

17

18 (Hearing was concluded
19 1:35 p.m.)

20

21

22

23

24

25

1 STATE OF INDIANA)

2) SS:

3 PORTER COUNTY)

4 C E R T I F I C A T E

5
6 I, Kay Dornburg, being a qualified and
7 competent court reporter, and Notary Public in and
8 for the County of Porter, State of Indiana, do
9 hereby certify that heretofore, to-wit: On the 30th
10 day of July, A.D. 2003, at LaPorte County Annex and
11 Security Center, 809 State Street, Commissioners
12 Meeting Room, LaPorte, Indiana, an Indiana State
13 Department of Health Rules Hearing was held.

14 That the proceedings were by me reduced
15 to writing by means of machine shorthand, and
16 afterwards transcribed upon a computer, and that the
17 foregoing is a true and correct transcript of the
18 proceedings, as aforesaid.

19 IN TESTIMONY WHEREOF, I have
20 hereunto set my hand this 18th day of August ,
21 A.D. 2003.

22
23 Kay Dornburg,
24 Court Reporter and
25 Notary Public